

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC  
SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. PN16WK-67011**

**L.W. on behalf of P.W., L.W,  
Individually, and the Director  
of the Division on Civil Rights,**

**Complainants,<sup>1</sup>**

**v.**

**Monmouth County Vocational  
School District,**

**Respondent.**

**Administrative Action  
AMENDED  
FINDING OF PROBABLE CAUSE**

On June 19, 2018, L.W. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) on behalf of her minor child, P.W., alleging that Monmouth County Regional School District (Respondent) discriminated against P.W. based on creed, when she was subjected to anti-Semitic comments and conduct by other students in her school. Additionally, Complainant alleges that her daughter was subsequently subjected to retaliatory harassment by other students who blamed her for the discipline of three students determined to be responsible for an anti-Semitic incident, and that Respondent was aware of the acts of reprisal and failed to take steps sufficient to end the retaliation in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination and reprisal in their entirety. DCR's investigation found as follows.

**SUMMARY OF INVESTIGATION**

Respondent operates nine vocational and technical high schools for students in grades 9-12 who reside in Monmouth County, New Jersey. Complainant's minor child, P.W., attended Respondent's Marine Academy of Science and Technology (MAST) from September 2015 through June 2018. MAST maintains a curriculum focused on marine sciences and marine technology/engineering, and requires each student to participate in the Naval Junior Office Training Corps. The school has approximately 300 students, with about 75 in each grade. P.W. attended MAST for her freshman, sophomore and junior years of high school. Complainant told DCR she transferred P.W. to a different school for her senior year due to ongoing harassment at MAST.

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<sup>1</sup> Pursuant to N.J.A.C. 13:4-2.2(e), the Director of the Division on Civil Rights has joined as a complainant.

In the verified complaint, Complainant alleged that since first enrolling in Respondent's school as a freshman, P.W. was subjected to anti-Semitic comments made by both classmates and teachers. Complainant admitted that none of these comments were reported to school administration at the time they occurred; however, the conduct was reported to school officials following incidents that occurred in April 2018. Complainant stated that on April 21, 2018, a classmate sent her daughter and a number of other students a photograph via a group text message. The photograph displayed the words "I H8 JEWS" written in very large letters in the sand with a student lying on the ground next to the writing. Complainant alleged that after this was reported to Respondent's school administrators, the students responsible for the photograph as well as a substantial number of other students in the school immediately retaliated against her minor child, subjecting her to harassment, intimidation and bullying that continued until the end of the school year. Complainant alleged that this was reported to the school but little action was taken to end the behavior, leaving Complainant with no choice but to transfer her daughter to a different school for her senior year.

In its response, Respondent denied that it failed to take action on any claims of anti-Semitic behavior as alleged by Complainant. Instead, it stated that it investigated each reported incident when possible and took appropriate remedial action when warranted. It stated that at all times relevant, it took steps to observe Complainant's daughter and her interactions with her classmates during the school day but did not witness the retaliatory harassment, intimidation and bullying alleged by Complainant. It stated that it maintains and adheres to a strict policy regarding allegations of student-on-student harassment, intimidation and bullying.

In an interview with DCR, P.W. stated that there were undertones of anti-Semitic behavior in 9th through 11th grade, which made her increasingly uncomfortable. P.W. explained that during a class early in her freshman year, two teachers mispronounced a student's last name emphasizing the first syllable, that was pronounced "Jew," and then laughing about it saying "imagine, we said Jew." P.W. indicated that although she found the comment offensive, neither she nor her parents reported it to the administration. She also indicated that she was surprised that anyone, especially staff members, would find the comment amusing.

In 10th grade, P.W. stated that she witnessed a group of students make references to Adolf Hitler and the Nazi party in a positive light. P.W. said that the students at her lunch table drew swastikas on the tables and on their notebooks, others circulated a student-made video throughout the school that depicted a staff member as Adolf Hitler, another student identified himself on social media as a member of Hitler youth, and several students were reading Mein Kampf during the "read" periods in class. Respondent confirmed during the DCR investigation that the 10<sup>th</sup> grade curriculum did not include the period surrounding the rise of Hitler, Nazi Germany or World War II and Mein Kampf was not part of any required or recommended reading list.

Although P.W. stated that she did not report these issues to the administration, she stated that Respondent knew or should have known about them. She stated that lunch tables were cleaned daily by custodial staff, who should have noticed the frequent reappearance of swastikas. She also stated that the student's cellphone with the objectionable video was, at one point, confiscated and the pictures and videos on it were examined by the building principal for an unrelated issue, and

for that reason he should have seen the Hitler video. She also stated that the students who were reading Mein Kampf made no effort to hide or disguise the book during the 25-minute daily read periods. P.W. said that at some point, a teacher would have had to notice Mein Kampf stacked on top of the students' text books, particularly as the teachers are expected to check and ensure that all reading material is appropriate. In addition, while Respondent asserted it was unaware of the student who self-identified as "Hitler youth" on social media, Complainant reported to DCR that she told then-Assistant Superintendent Tony Shabile about it during P.W.'s sophomore year and his response was that "there has always been racism and anti-Semitism and there always will be."

P.W. stated that similar behavior continued in 11<sup>th</sup> grade. She said that her classmates continued to make anti-Semitic remarks in her presence. P.W. stated that seatmates at her lunch table gave each other Jewish-sounding surnames as a joke, then ridiculed the names. She stated that they routinely referred to a Jewish teacher at the school as "an obnoxious Jew." P.W. also stated that when the students were instructed to memorize the names of [REDACTED], the instructor suggested that one could be easily remembered because it rhymed with "Mein Kampf." P.W. also stated that this instructor also discussed her own religion during class, stating that she "love[d] being Christian" and that it was a "great religion."

Respondent indicated that it was unaware of the first two allegations but denied the last. However, during an interview, [REDACTED] acknowledged that she may have suggested memorizing one of the names of a military leader as rhyming with Mein Kampf, but denied that she in any way made a comment that promoted her personal religious beliefs. In a subsequent interview, Building Principal Earl Moore stated [REDACTED] does include cultural competency in its curriculum, including religious diversity, but that it was possible a comment that [REDACTED] made could have been misinterpreted.

On Saturday, April 21, 2018, a number of Respondent's students participated in a "beach sweep" at Sandy Hook, a federally-owned peninsula in Monmouth County on which Respondent's school is located.<sup>2</sup> This is an activity conducted twice annually involving students from Respondent's school. While there, two male students wrote "I H8 JEWS" in very large letters in the sand and then took a photograph with one of the students lying on the ground next to the writing. They forwarded the photograph to a number of students, including P.W., who was at home. L.W. stated that P.W. was very disturbed by the photo and some of the comments that followed made by other students who viewed it, including one who suggested the photo be used as a yearbook cover. L.W. stated that her husband contacted Principal Moore to inform him of the photo and group text message. He also asked that his daughter's name be kept out of this. Moore reported that he immediately went to the site of the beach sweep, located the students involved, saw the offensive writing and questioned them about the events. He also instructed the students to add him to the group text message.

On Monday, April 23, 2018, Respondent's Anti-Bullying Specialist, Marcy Kaye, initiated a formal investigation into the incident. After reviewing the emails that were exchanged between Complainant's husband and Moore, Kaye interviewed the two male students responsible for writing the message, photographing it and then distributing the photo.<sup>3</sup> She also spoke with the

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<sup>2</sup> Students donate time clearing away trash and debris from this public beach.

<sup>3</sup> Identified in the complaint as student 8 and student 10.

student who made the yearbook comment as well as several others who were the recipients of the text message. One of those recipients, student C, who is also Jewish, stated that he saw the photo but took it as a joke from the outset, adding that “kids say things about being Jewish” but that they were his friends and he did not feel harassed. Kaye was unable to speak with P.W., who did not attend school that day. Kaye stated that she worked collaboratively with Principal Moore going forward and they both concluded that Complainant’s daughter and the other Jewish recipient were the intended targets of the photo. They concluded that the two male students who wrote, photographed and distributed the photo violated Respondent’s H.I.B. policy, and they were given a four-day out-of-school suspension as punishment, the second highest penalty permitted by district policy. The two also concluded that the “yearbook” comment was a student code of conduct violation and that student received a two-day out-of-school suspension. Respondent noted the investigation concluded that same day, and consistent with policy, formal written notification of the results of the investigation was forwarded to the parents of both targeted students as well as the three students who were disciplined. Reports regarding the matter were sent to School Superintendent Timothy McCorkell and District H.I.B. coordinator, Assistant Superintendent Charles Ford.

DCR reviewed an email Complainant’s husband sent to Moore later that evening. He wrote that he was “beyond enraged” as his daughter had been getting messages from other students questioning her absence from school that day and asking if she was the student who reported the incident. P.W.’s friends, student A and student B, told DCR during an interview that by Tuesday, April 24<sup>th</sup>, a consensus had built among the students that P.W. was the “snitch” who contacted Moore about the photograph. Although both Kaye and Moore denied that they referenced P.W. in any way, several students told DCR that students had concluded the snitch was P.W. because Moore stated that the photo was so disturbing to one student that she did not come to school that day, and P.W. was the only female student home from school that day (one other female student, student B, was on a college tour). P.W. provided DCR with a copy of a screen shot of a text message from student C, who referenced Moore’s comments about the student who stayed home and then asked P.W. why she was afraid of student 8, one of the male students responsible for the photo.

P.W. returned to school on Wednesday, April 25<sup>th</sup> and Complainant and her husband continued to communicate with Principal Moore by email. Complainant reported to Moore that her daughter walked to her Spanish class to the sound of classmates chanting “free [student 10].” P.W. told DCR that the other students did this in the building vestibule and the Spanish instructor, who was already in the classroom, had to have heard it.<sup>4</sup> In an interview with DCR, Moore stated that the Spanish teacher denied hearing any such thing. He also told DCR that he requested Complainant provide the specific names of the students allegedly involved, but none were forwarded and no additional investigation followed.

By the end of the week, on Friday April 27, Complainant’s husband emailed Moore again and stated that his daughter was being retaliated against by a number of her classmates who refused to speak to or acknowledge her. But he wrote: “...disciplining every student who whispers, texts or snubs will only make it worse.” Moore responded to Complainant that in order to follow up,

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<sup>4</sup> During a field visit, it was noted that the school uses a number of small military-style barracks as classrooms. After entering into a small vestibule, there are restrooms directly in front and a classroom on each side of the vestibule.

he needed specific names of students who were refusing to speak to P.W. Moore and Kaye also met with P.W. that day and, according to Respondent, that was the first time P.W. informed Moore and Kaye about students drawing swastikas on tables and notebooks, as well as the video depicting a staff member as Hitler a year earlier. According to Kaye, P.W. provided no additional information or evidence in support of these statements, so no investigation could be conducted. In an email to DCR, P.W. wrote that neither Moore nor Kaye asked her to provide names at the meeting. Nonetheless, in an email sent to Moore on May 29<sup>th</sup>, P.W. identified the student who made the video.

Complainant's husband continued to email Moore about the treatment his daughter was being subjected to by her classmates. On May 2<sup>nd</sup>, he alleged that a group of students were circulating a petition to "shun" the snitch who was "too afraid to come to school." Both Complainant, her husband and Moore continued to communicate by email during the week of May 2, with Moore asking for specific names and Complainant expressing belief that if specific names were provided, the mistreatment could be even worse. Moore also indicated that he spoke with teachers who reported seeing nothing negative in the classroom. On May 3, 2018, Moore wrote to Complainant and her husband that "there is nothing we can do without names." He wrote again later that evening that "I have talked to all of [her] teachers and they are on alert to be vigilant. Should we find any indication that [she] is being intimidated or treated cruelly will act promptly." The following day, Moore sent an email to all staff members to be "vigilant and alert" to any possible mistreatment of Complainant's daughter and report anything observed, either good or bad.

In Respondent's answer, Moore indicated that staff responses were all positive regarding their observations of P.W. However, Complainant continued to email Moore that her daughter was experiencing substantial ostracism by classmates with whom she previously had cordial relationships. By way of example, she indicated that other students failed to respond to P.W.'s text messages inquiring about school work, repeatedly whispered and pointed at her and referred to her as the snitch, removed her without warning or discussion from the table for the school prom, circulated a group text message alerting students to avoid Asbury Park on a particular day as the "snitch" was there, threw a cell phone at her feet, refused to be her partner for a school project, refused to walk with her on a school trip, and ran away from the lunch table as she approached. In an interview with DCR, Moore stated that he investigated the cell phone incident, concluding that it was horseplay in that the student who tossed it was trying to throw it into a trash receptacle, missed, and it accidentally landed near Complainant's feet. Moore also stated that some of the information shared by Complainant was third-hand and, in the absence of specific names, there was little he could do.

Despite Moore's statements to DCR that individual harassers were never identified, Complainant provided copies of a number of emails she sent to Moore listing specific names. In a May 10<sup>th</sup> email, Complainant identified a female student who was shunning and laughing at P.W. A May 23<sup>rd</sup> email identified three students by name who were giving P.W. "a bad time." In a June 1<sup>st</sup> email to Moore, Complainant provided names of classmates who were encouraging students to shun her daughter, saying that anyone failing to do so was a "traitor." In an interview with DCR, student A corroborated the "traitor" statement. In a June 7<sup>th</sup> email to [REDACTED] P.W. identified two female students who laughed and whispered openly about her in her

presence. Another teacher spoke privately with P.W. regarding a planned class boat trip where P.W. would have no choice but to be in the company of students who made her uncomfortable.

P.W. acknowledged that several teachers, [REDACTED] spoke with P.W. on several occasions to see how she was doing. P.W. also stated a few staff members made supportive comments to students A and B, the only two friends Complainant alleged she still had after reporting the April 21 incident, thanking both students for their continued friendship and support to P.W. In an email Complainant sent [REDACTED] on May 10<sup>th</sup>, she wrote thanking [REDACTED] for “trying to quell some of the negative behavior towards [P.W.] that you witnessed in your class.” She also wrote that she had reached out to [REDACTED], who stated she “noticed the behavior toward [P.W.] is not great and she is going to move the entire class’ seating and blame general class behavior so it isn’t obvious a [P.W.] thing. Thanks so much for the advice to reach out to her, she was super helpful!”

During interviews, both [REDACTED] admitted observing Complainant’s daughter appearing sad, and both acknowledged that Moore reached out through his staff-wide email asking staff to be vigilant for signs of cruelty, but both stated they were unaware of the specific underlying issue as to why P.W. was upset. Both denied knowing anything about the beach incident.

However, at least two of the three students suspended for the beach incident were students [REDACTED] class. And on May 1<sup>st</sup>, P.W. wrote an email to [REDACTED]: “I found out that they talked to you because they went around to the whole grade calling me a snitch but at this point after everything...I am losing my will to care.” [REDACTED] wrote back “[P], this will pass...I know how hard it is when you feel everyone is against you...kids are fickle, whatever the support is that the girls think they have is transitory, thankfully the year is almost over.”

When asked by the DCR investigator what she believed P.W. was referring to in the email, [REDACTED] explained that she perceived this as “typical school girl drama, nothing else and I did not connect it to anything else...this is girl drama...I have seen childish stuff that I wrote it off.” [REDACTED] was reminded that P.W. wrote to her that the “whole grade is calling me a snitch” following the beach incident, and that the two female students she was referring to in her email were some of those responsible, but [REDACTED] still stated that she perceived this to be “girl drama” and had no knowledge of the beach incident. [REDACTED] explained that she never saw P.W. mistreated in any way and that all of her students conducted themselves properly in class.

In mid-May, P.W. noticed that a small rock had been placed on a water cooler located directly behind her assigned seat in [REDACTED] class. The name “adolf” had been written on the rock in black marker. P.W. stated that she was horrified, photographed it with her phone and sent the photo to her mother. In her DCR interview, [REDACTED] was questioned about the rock. [REDACTED] stated that when she first noticed the rock, she believed the writing on it spelled out “hope.”<sup>5</sup> Shortly afterward, a senior student brought the rock to her attention, showing her that it in fact spelled out “adolf.” According to [REDACTED], she disposed of the rock by tossing it outside on a rock pile behind her classroom. During the interview, [REDACTED] confirmed that this occurred in mid-May; however, she did not explain why she failed to notify Moore about the rock and its placement

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<sup>5</sup> If the letters in the word “hope” are written in a specific way, when placed upside down, the writing says “adolph.” According to an internet search of “adolf hope,” this inversion means “adolf was our last hope.”

directly behind a Jewish student. [REDACTED] recalled that a short time afterward, she discussed the rock casually with a few staff members at a meeting and that was when Moore learned about it. Moore and [REDACTED] both told DCR that Moore then located the rock that was still outside her classroom where [REDACTED] had originally disposed of it.

P.W. described another incident that she felt showed that she was held in contempt by her classmates. She stated that one of the students suspended for four days ran for the class officer position that she had held for three years. Complainant emailed Moore on June 7<sup>th</sup> alleging this student, identified as student 10, did this out of spite and to "...see her face when she loses." Moore stated he questioned the student and the student's parents and that they all stated his motivation in running for the position was to be able to show a leadership position on college applications. Moore said he was satisfied with the explanation. Student A told DCR that she agreed with Complainant's sense of this student's motivations.

During an interview with her parent present, classmate Student A indicated that she was in school on Monday, April 23, 2018, and that the beach incident was being discussed openly by many of her classmates. She also indicated that by late that day, many students believed it was P.W. who reported the photo. During an interview, she confirmed much of what was alleged by Complainant about the harassment that P.W. endured. She also stated that the year prior to the beach incident she witnessed a few classmates reading Mein Kampf, who then expressed to her the view that Hitler "did some messed up stuff, but he was a mastermind." She confirmed that she was instructed by classmates not to talk to P.W., and was told "she's a snitch and she'll get you in trouble" and "I can't believe that you sit with her." Student A told DCR that she saw a social media post about herself that said "hates snitches but is still friends with [P.W.]." She confirmed that she was approached by Kaye, who thanked her for being a good friend. She stated that she and others were aware that the classmate running for treasurer did it specifically to embarrass P.W. She stated that she tried to distract P.W. when she observed her being ostracized or whispered about in class. She explained that "he [Moore] was calling down the kids that were doing the bullying and taking their word for it," in other words, believing them that they were not bullying P.W.

Classmate Student B was also interviewed in the presence of a parent and confirmed that many of her classmates were talking about the photo when she returned to school on Tuesday, April 24, 2018. She said that the classmates' consensus was that P.W. "brought this on herself."<sup>6</sup> Student B also admitted that much of what was being done to P.W. was subtle but that it was, in her opinion, still bullying, "like not talking to her and then not talking to me because I was friends with her." She continued that other students all "talk[ed] about being called in [by Moore] and what they were going to say."

## ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief

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<sup>6</sup> Complainant provided a screenshot of a text message from Student C to P.W. stating the same thing, that being ostracized by everyone was her own fault and that she brought this on herself.

that the [LAD] has been violated.” N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.”

The LAD makes it unlawful for any superintendent, agent or employee of a public accommodation to directly or indirectly refuse, withhold from or deny to any person “any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof” based on religion. N.J.S.A. 10:5-12(f). A “place of public accommodation” expressly includes any high school under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey, including Respondent. See N.J.S.A. 10:5-5(l). In L.W. ex rel L.G. v. Toms River Regional Schools Bd. Of Educ., 189 N.J. 381, 402 (2007), the Supreme Court held that a school district may be found liable for student-on-student harassment if the school district’s failure to reasonably address that harassment has the effect of denying to the student any of a school’s accommodations, advantages, facilities or privileges. In order to state such a claim, the Complainant must show discriminatory conduct that would not have occurred “but for” the student’s protected characteristic, that a reasonable student of the same age, maturity level, and protected characteristic would consider sufficiently severe or pervasive to create an intimidating, hostile, or offensive school environment, the school district failed to reasonably address such conduct. Id. at 402-403, citing Lehmann v. Toys ‘R’ Us, Inc., 132 N.J. 587 at 603, 604 (1993).

In this case, P.W. was targeted with a photograph taken by students during a school-sponsored event stating “I H8 Jews” that appeared to be widely circulated among the class. This followed other anti-Semitic conduct, including the drawing of swastikas on school property and repeated positive references from students to Adolph Hitler and the Nazi party. Complainant was then ostracized by other students as being a “snitch” for reporting the behavior and found a rock placed near her seat with “adolf” written on it. For purposes of this disposition, the alleged conduct was sufficiently severe and pervasive that a reasonable high school student who is Jewish would find the educational environment to be hostile or offensive.

Respondent asserts that it took appropriate action to address the conduct following the April 21, 2018 incident at the beach. It also claimed it attempted to address any reported hostility to P.W. but could not do so with knowing which specific students were responsible for the ongoing harassment of P.W.

In determining whether a school has acted reasonably in response to peer-student harassment:



[T]he factfinder .... should consider all relevant circumstances, including, but not limited to, the students' ages, developmental and maturity levels; school culture and atmosphere; rareness or frequency of the conduct; duration of harassment; extent and severity of the conduct; whether violence was involved; history of harassment within the school district, the school, and among individual participants; effectiveness of the school district's response; whether the school district considered alternative responses; and swiftness of the school district's reaction. Only a fact-sensitive, case-by-case analysis will suffice to determine whether a school district's conduct was reasonable in its efforts to end the harassment.

[Id. at 409.]

Further, fact-finders "must consider the cumulative effect of all student harassment and all efforts of the school district to curtail the mistreatment." Ibid. Any assessment of the reasonableness of a school district's response may also be informed by what the Department of Education advises school districts to do in such circumstances, including in DOE's Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses (Model Policy). Id. at 411.

In this case, it appears that Respondent took quick action when first informed of the incident on the beach. Upon being alerted to the photograph, Principal Moore went to the beach and observed the anti-Semitic display and directed the students to add him to the text messaging group so he could see the messages being exchanged. The school initiated an investigation and disciplined the students involved. While Respondent appears to have appropriately addressed the beach incident, resolution of this matter involves a larger set of issues than merely the beach incident. See Id. at 409 ("agencies and courts reviewing the adequacy of a school district's response must avoid a cabined perspective that views incidents of harassment in isolation."). In connection with the beach incident, P.W. reported several other incidents of anti-Semitic conduct she had experienced and witnessed over the years at MAST. Additionally, the other Jewish student the beach photograph was directed to informed school officials that other students were making comments about him being Jewish. And following these incidents, [REDACTED] and Moore became aware of a rock in [REDACTED] classroom that was placed next to P.W. with "adolf" written on it. It does not appear that the school took any broader actions to discern the extent of anti-Semitic behavior at the school or to address the reported concerns beyond the beach incident. As stated in the Model Policy, "some acts of harassment, intimidation or bullying may be isolated acts requiring that the school officials respond appropriately to the individuals committing the acts. Other acts may be so serious or parts of a larger pattern of harassment, intimidation or bullying that they require a response either at the classroom, school building or school district levels." Model Policy at 22. It appears in this case that the beach incident may have been part of broader pattern of anti-Semitic conduct at MAST that called for broader institutional actions on the part of the school to identify and address such conduct. By not undertaking such actions, Respondent may be found to have not acted reasonably in response to the reported conduct.

The Model Policy also provides that a school district should respond to incidents of harassment, intimidation or bullying in a manner that provides relief to victims but does not stigmatize victims or further their sense of persecution. Model Policy at 24. This is consistent with requirements in the LAD that an individual not be subjected to retaliation for making a complaint of discriminatory conduct. N.J.S.A. 10:5-12(d). Here, the investigation found evidence that P.W. was subjected to ongoing harassment due to her report of the beach incident.

Respondent contends it took appropriate action to protect P.W. from retaliation. But the investigation found evidence contradicting that assertion. Respondent's staff admitted it noticed the effects of the harassment on P.W. in that several staff members approached P.W.'s friends and expressed gratitude to them for supporting her. These same friends confirmed that the offending students put pressure on other students to join in by "shunning" P.W. and then rebuked those who would not take part. Several staff members also spoke with P.W. about alternative arrangements when participation in class events would have put her in proximity with students with whom they knew she was uncomfortable. Although Respondent stated that names of the offending students were never provided, which precluded it from conducting any meaningful investigation, Complainant provided copies of emails identifying the offending students.<sup>7</sup> Additionally, P.W. provided an email that clearly indicated to her teacher two of the classmates responsible for getting others to call her a "snitch." The teacher appeared to brush off Complainant's concerns as just "girl drama." That same staff member later learned that a rock left in her classroom actually displayed the name "adolf" and was placed directly behind P.W., but failed to report that to Respondent's administrators, instead disposing of it in a rockpile. While the staff member claimed to be unaware of the beach incident or any other anti-Semitic conduct, at least two of the students suspended for the beach incident were students in the teacher's class. Moreover, the small size of the school and the class, with approximately 300 students in the entire school and less than 75 in the junior class, would make it easier for the staff to be aware of, or find out about, incidents going on in the school. The small size of the class would also contribute to the feelings of isolation felt by P.W. when she was shunned by other students.

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against P.W. based on her religion and that P.W. was subjected to reprisals for reporting discriminatory conduct. At this threshold stage in the process, there is sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant's allegations of discrimination.



Rachel Wainer Apter  
NJ Division on Civil Rights

Date: December 5, 2019

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<sup>7</sup> The DOE Model Policy offers as examples of institutional responses to harassment, intimidation and bullying that may be appropriate under the circumstances: school and community surveys, mailings, and focus groups to understand the scope of the issues being faced. Model Policy at 22. There is no indication that Respondent implemented any of these responses in this matter.